

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 13695 of 2007(E)

PETITIONER:

**O.K.NANDAKUMAR, SECRETARY,
KOTTAYAM DISTRICT BUS OPERATORS
ORGANISATION, MEENACHI TALUK UNIT,
PALA.**

BY ADV. SRI.K.V.GOPINATHAN NAIR

RESPONDENTS:

**1. PALA MUNICIPALITY,
REPRESENTED BY THE SECRETARY.**

**2. THE SECRETARY, PALA MUNICIPALITY,
PALA.**

BY ADV. SRI.V.M.KURIAN (SC)

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE NOTIFICATION ISSUED BY THE PALA MUNICIPALITY.

EXT.P2: COPY OF THE RECEIPT EVIDENCEING REMITTANCE OF 1/3 OF THE BID AMOUNT DATED 9.3.2007.

EXT.P3: COPY OF THE REQUEST MADE BY THE PETITIONER ON 30.3.2007.

EXT.P4: COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 10.4.2007.

EXT.P5: COPY OF THE NOTICE DATED 17.4.2007 ISSUED BY THE 2ND RESPONDENT.

EXT.P6: COPY OF THE DECISION OF THE FIRST RESPONDENT DATED 13.4.207 IN ITEM NO.17.

RESPONDENTS EXHIBITS:

EXT.R2(a): COPY OF THE NOTICE DATED 27.3.2007 ISSUED TO THE PETITIONER.

EXT.R2(b): COPY OF THE APPLICATION DATED 30.03.2007 SUBMITTED BY THE PETITINER BEFORE THE 2ND RESPONDENT.

EXT.R2(c): COPY OF THE MINUTES OF THE MEETING DATED 12.04.2007.

K. M. JOSEPH, J.

W.P.C. NO. 13695 OF 2007 E

Dated this the 27th July, 2007

JUDGMENT

Petitioner has approached this Court challenging Exts.P5 and P6 and seeking a declaration that he is entitled to have the right to collect bus stand fee in the respondent Municipal Bus Stand for the year 2007 - 2008 in accordance with the existing contract. The case of petitioner, in brief, is as follows:

The right to collect the fee prescribed by the respondent Municipality from the stage carriages operated through Pala was auctioned by the Municipality under Ext.P1 Notification for the year 2007 - 2008. The petitioner bid the right by way of tender for Rs.9,61,000/=. 1/3rd of the amount, namely Rs.3,20,500/= was remitted on 9.3.2007. The bid amount is to be remitted only by eight monthly instalments which the petitioner is prepared to abide by. On 21.3.2007, the auction was confirmed in favour of the petitioner. It is stated that as instructed, agreement was executed on Rs.50/= Stamp Paper and furnished two sureties

with identity cards. Petitioner submitted Ext.P3 request for allowing one month's time on 30.3.2007 for production of solvency certificate. This was in view of the Revenue Adalath and consecutive holidays. It is stated that Ext.P3 was not refused and the petitioner was under the bonafide belief that the same was allowed. The Municipality, thereafter, handed over the room for carrying out the work and the petitioner is collecting the bus stand fee. It is the case of the petitioner that there is an unauthorised unit functioning in the bus stand as time keeping unit for announcing of timing of buses and they forcibly collected Rs.10 and above upto Rs.100/= per vehicle which is illegal and the petitioner filed a complaint before the police authorities and before the Municipality. A meeting was convened under Ext.P4 in which the petitioner participated and explained the difficulties consequent on the illegal collection as aforesaid. The second respondent who is the Secretary of the Municipality issued Ext.P5 notice dated 17.4.2007 stating that though the petitioner has been given the right to collect the fee

and the same was approved by the Council, the Council on 13.4.2007 decided to cancel the same, since the petitioner has not produced the solvency certificate within ten days which alone was allowed by the second respondent. It is also stated that re-auction will be conducted at the risk of the petitioner. Ext.P6 is the decision of the Council dated 13.4.2007. Petitioner challenges the same.

2. The stand taken in the Counter Affidavit filed by the second respondent is, inter alia, as follows:

Petitioner has not executed any agreement. There is no violation of any fundamental right or statutory right. Ext.P1 tender conditions provide that within seven days of confirmation of the bid by the Council, agreement has to be executed with surety providing solvency certificate. The bid was provisionally confirmed by the Secretary on 21.3.2007 as per Resolution No.2 and Ext.R2(a) notice dated 27.3.2007 was issued requiring the petitioner to comply with Ext.P1 auction conditions and the petitioner has not complied with despite the notice. It is stated

that following the notice, petitioner produced Stamp Paper worth Rs.50/= for executing the agreement. But, details of the sureties and solvency certificate etc. were not produced and hence agreement was not executed. It is stated that the balance 2/3rd of the bid amount was to be paid in instalments and the first instalment of Rs.80,063/= was due on or before 10.4.2007 which the petitioner did not remit. It is stated that the petitioner submitted Ext.R2(b) application dated 30.3.2007 for giving thirty days' time to produce solvency certificate. It is stated that Ext.P3 is not the true copy of the petition submitted before the second respondent. It is stated that the said request could not have been allowed in any case, and that the second respondent informed him that all the required formalities have to be completed before 10.4.2007. It is also stated that he is not competent to vary the conditions fixed by the Council. Regarding the time keeping unit, it has been functioning from 1979 with the consent of the Municipal Council, it is submitted.

3. In the Reply Affidavit, it is, inter alia, stated that the

petitioner produced Stamp Paper worth Rs.50/= and entrusted the second respondent for filling up the conditions of agreement. As instructed by him, the deponent and two sureties who are the Joint Secretary and Treasurer of the Organisation respectively signed the Stamp Paper and entrusted the same with the second respondent for filling up the necessary conditions which is the normal procedure following in the matter of execution of agreement with a statutory authority, like the first respondent and on the assurance that the conditions will be filled up by the second respondent, he accepted the same. It is stated that along with the Stamp Paper, photo copy of the identity card of two sureties were also produced which were also accepted by the second respondent. It is stated that Ext.P3 as well as Ext.R2(b) was submitted for consideration of the respondents. It is seen that the second respondent made an endorsement in Ext.R2(b) granting time upto 10.4.2007. But, the said aspect was not informed to the petitioner or no proceedings or letter has been issued by second respondent in this regard. Petitioner reiterates

that the functioning of the time keeping unit is without any law or authority. It is stated that in the re-auction conducted, the highest bid amount was only Rs.7,50,00/= and that person has withdrawn from the offer. It is stated that the petitioner has commenced work.

4. I heard Shri K.V. Gopinathan Nair, learned counsel appearing for the petitioner and Shri V.M. Kurian, learned counsel appearing for the respondent Municipality. Counsel for petitioner points out that it is only because the petitioner gave a complaint that Exts.P5 and P6 were issued. He would submit that the purpose of solvency certificate is only to ensure that the payments remaining to be made by the contractor are made. He would submit that the petitioner is prepared to furnish any other mode of security including Bank Guarantee. He would further submit that this is a case where the petitioner has produced sureties with identity cards and the agreement was entered into. There was no communication about the decision granting time upto 10.4.2007 and having regard to the purpose of the solvency

certificate, there is no ground to cancel the contract, it is submitted. It is stated that before passing the impugned order, no notice was issued to the petitioner. Petitioner has already remitted 1/3rd of the amount.

5. Per contra, Shri V.M. Kurian, learned counsel for the respondent Municipality would contend that the matter is governed by Ext.P1 Notification fixing the conditions. No fundamental right of the petitioner is violated. Equally, the petitioner does not have any statutory right. There is, in fact, no contract with the petitioner even, it is contended. He would point out that Ext.R2(b) would show that Ext.P3 produced by the petitioner is not the document actually given by the petitioner before the Authorities. At any rate, second respondent does not have the authority in granting time. This is apart from the stand, of course, that within the time granted as per Ext.R2 (b), the solvency certificate was not produced by the petitioner and thus Ext.P6 decision dated 13.4.2007 was taken. He would also invite my attention to the clause (6) of Ext.P1 to contend

that the petitioner did not comply with the same.

6. Admittedly, the petitioner has not produced the solvency certificate. Admittedly, as per Ext.P1, petitioner was bound to produce the solvency certificate within seven days from the date of approval of the bid by the Council. Petitioner was to execute an agreement also. I am not much impressed by the contention of the petitioner that no notice was given prior to the cancellation. In Ext.R2(a) dated 27.3.2007, it is stated, inter alia, that within seven days of receipt of the same, petitioner was obliged to produce Stamp Paper worth Rs.50/= to execute agreement, produce the solvency certificate, identity card and if it is not done, it is specifically stated that the contract would be terminated and the security amount will be forfeited to the Municipal fund. Therefore, the argument of absence of notice, cannot avail the petitioner. It is stated that the second respondent informed him that the required formalities should be completed before 10.4.2007. In the Reply it is stated that the said decision was not informed. Of course, the case of the

respondents is that there is no authority with the second respondent to take such a decision as it is varying the terms of the tender notification and if at all, it is a matter which is impermissible and at best, it could only be the Council which could take such a decision. Admittedly, petitioner has not produced the solvency certificate even by 10.4.2007. Therefore, the petitioner has not acted in terms of Ext.P1 by which the petitioner is bound. It may not be open for this Court to compel the respondents to act contrary to the terms of Ext.P1. There is also difference between Exts.P3 and Ext.R2(b). Even accepting the case that the first respondent had authority, the question whether the petitioner was informed about the time being given till 10.4.2007 is at best a disputed question of fact. The Writ Petition is dismissed.

K. M. JOSEPH, JUDGE

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